

Business Roundtable Meeting Notes – February 28, 2002

235 Promenade Street, Providence, RI

Room 300, 3:30 –5:00

Attendees:

T. Aubee, J. Boehnert, K. Camp, M. Geisser, P. Lombardi, J. Martiesian, D. Mitchrone, B. Hutchinson, B. Mendoza, M. Conway, M. Hackman Jr., J. Lennon, R.K. Mishra, A. McManus, A. Bissonnette, J. Unsworth, M. Courtemanche, C. Williamson, M. Maranda

DEM

J. Reitsma R. Chateaufneuf, B. Migliore, T. Gray, G. McAvoy, T. Maguire, F. Vincent, E. Stone

The October meeting notes were reviewed and they were accepted as written.

1. Environmental Results / Performance Track Program Discussion

Margie Miranda, from the US EPA, provided an update on EPA's efforts on the performance Track Program. She mentioned EPA was conducting a Performance Track Application Workshop on April 4, 2002 to discuss the program requirements. She mentioned this program is viewed as a reward for company's environmental efforts. Implementation of an Environmental Management System, a compliance record, and an outreach program are some of the requirements to participate in the program. Large companies are required to set goals in four areas and may include some of the following: energy use, solid waste reduction, stewardship, efforts beyond compliance, etc. She mentioned that it is not necessary to implement an ISO 14001 system.

Beverly Migliore from DEM reviewed DEM's efforts in this area. She mentioned that DEM was evaluating incentives for companies to participate in the program. One idea mentioned was to allow companies to earn the right to use a logo on their products or advertisements. This logo would identify the company as having an exemplary environmental record. She thought one of the impediments was the requirement that companies implement an EMS for at least a year. The majority of Rhode Island companies are small, and they do not have access to an environmental department and therefore do not have the resources to develop an EMS. This requirement prevents many facilities from adopting the EPA program.

DEM was evaluating an Environmental Leadership Program (ELP). The department hired Tellus, a private contractor, to conduct a focus group to determine the best approach to develop an Environmental Leadership Program. Their evaluation indicated that companies are interested in real incentives and unless there were incentives, few companies would participate in the program. Incentives discussed included:

- Establishing a single point of contact in the agency for ELP participants;
- Reduced inspections or monitoring frequency;
- Directed use of the state's audit policy;
- Flexible permits;
- Integrated reporting;
- Safe landings" for companies that experiment with new technologies designed to achieve pollution prevention;

- An affirmative statement of a facility's compliance status made by RIDEM;
- Pollution-prevention based general permits; and
- Facility-wide permits and caps.

The group discussed the issue and participants made the following points:

- Companies are struggling to get into compliance. DEM should focus on facility compliance before they push for initiatives that go beyond compliance.
- Unless ISO 1400 is required, companies are inclined to develop Environmental Management Systems.
- Companies may be close to meeting the goals of the program, but are not aware of the initiative.
- DEM should focus more on developing a state program and not the federal initiative.
- Use vendors of people who are participating in the ISO program and determine if they can provide contacts for other companies who would want to participate in a state program.

2. Regulatory Update

DEM distributed the latest regulatory update that was developed and mentioned the following regulations are being developed or revised:

- ◆ Revision to the Arsenic Standard
- ◆ Fees, including Hazardous Waste Generators, UST and Tanks
- ◆ Reclassification of used oil
- ◆ Mercury regulation
- ◆ Air Toxics regulations
- ◆ Dredging
- ◆ Accidental Release Regulations

3. Legislative Update

DEM discussed the Authorization for Judicial Warrants for Administrative Searches (S-2328, Senator Blais) and Increasing Penalties for Wetlands, Air and Hazardous Waste (S-2289, Senator Blais). The director mentioned that DEM needs a simple mechanism for entering suspected properties to perform administrative inspections. The current system is problematical, and in one instance DEM was in court for a year arguing the issue. The current bill has the support of the RI ACLU and has passed the Senate during the last legislative session.

The director mentioned there is a need to increase the penalties for Wetlands, Air and Hazardous Waste violations. He mentioned that the state lost 2.1 acres of wetlands through permitted activities, however, seventeen acres were lost due to non-compliance activities.

The daily cost of the violation was a concern for one participant. Constitutional issues are raised due to the level of a potential penalty. He did not have a problem with a willful violation, but was concerned about the cost to a homeowner who may not be aware of the regulations. The

director responded that DEM does use its discretion and in most cases, notifies the property owner with an intent to enforce notice, before actually sending out a formal enforcement notice.

A question was asked about the use of enforcement matrices in the administrative penalty regulation. Terry Gray mentioned that regulations, including the enforcement matrices are located on the DEM website.

One participant thought the violation of the regulations should be tied to the person's knowledge or intent. The Director thought this test would unfairly shift the burden to DEM.

Another person thought that DEM should fine the person responsible for causing the problem, possibly the builder or the previous owner and not the present homeowner.

Another person suggested that wetland permit approvals should be noted on the deed. Subdivisions are required to do this now and this could be a good mechanism to ensure that new homeowners are aware of previous permitting activities.

4. Brownfields Update

S-2528, H-7569, H-7489 and H-7695 bills were discussed. The latter bill provides tax credits for the redevelopment of Brownfields properties. H-7489, the legislative commission bill, is compatible with the recently passed federal legislation. This bill addresses liability relief, downgradient receptors and municipality protection.

Rich Hittinger also mentioned that the Rhode Island Society of Environmental Professionals and DEM sponsored a workshop on DEM's Marginal Risk Policy. This policy encourages and streamlines the process to clean up contaminated sites. About sixty people attended this successful workshop.

5. Budget Update

DEM was required to develop a budget that represented a 6% reduction from last year's budget. DEM took the approach of cutting some programs and proposed fee increases to in an attempt to maintain the level of service of DEM's programs. DEM fee increases totaled \$2.8 M of which \$1.8 were proposed by the Bureau of Natural Resources. DEM reduced expenditures in the Pollution Prevention Program, Integrated Pest Management Program and delayed a number of capital projects.

The Governor's FY 2003 Budget for the Department of Environmental Management is \$73,061,347. This includes an increase of \$1,963,046 in general revenues, an increase of \$86,299 in federal funds, and an increase of \$2,659,379 in restricted receipts. RI Capital Funds are reduced by \$3,121,241.

The FY 2003 budget assumes a turnover rate of 3.5%, which translates in leaving 24.0 Full Time Equivalent (FTE) positions vacant. This is a reduction from the 2002 revised numbers of 26.1 FTE positions or 4.5%.

The director mentioned the DEM proposal may not be accepted and further cuts may be required. The budget cuts may affect the ability of DEM to provide services.

Participants raised concerns on the increases in fees in the Hazardous Waste Program. A participant recommended DEM to review the New York State approach that assesses fees on a generation of waste basis. Flat fees are inequitable and do not encourage the use of pollution prevention. A participant mentioned that twenty-seven companies produce eighty-seven per cent of the waste. The fee should be based on generation and the current proposal shifts too much of the burden on small generators.

The director mentioned it was hard to cut an important program like pollution prevention. He said URI was being approached to pick up the cost of the program. This program is also ripe for a public / private partnership. He also mentioned that the waste fees are needed to correct a structural deficit in the waste program.

6. Fuel Oil Tank Guidance

DEM and the Oil Heat Institute developed a brochure for the installation of fuel tanks in basements. The group would like to meet and develop guidance for underground tanks that have a capacity of less than 1100 gallons. DEM does not regulate these tanks unless they leak. The industry noted instances where these tanks have been improperly installed and could cause future problems.

The Oil Heat Institute will take the lead for the project and requested DEM's participation. DEM's involvement would be to comment on their guidance and participate in a number of meetings where this issue will be discussed.

7. Role of Ombudsman

Jason Martiesian brought this topic up and he said the members of Rhode Island Association of Environmental Managers were not clear about the duties and function of an Ombudsman. Some of the major duties of the Ombudsman include:

- ◆ Improvement of DEM's effectiveness, efficiency and accountability, and to increase both external and internal support.
- ◆ Towards this goal, the Ombudsman is charged with authority to undertake independent, and in certain cases confidential, fact-finding in response to external or internal complaints or questions about the Department's performance.
- ◆ The Ombudsman will facilitate resolution of complaints in coordination with Department staff and management, and will make recommendations to the Director on matters that cannot be resolved through such coordination. The Ombudsman is responsible for ensuring that the fact-finding process is perceived and experienced as an independent, impartial, fair and credible process.
- ◆ In addition to independently investigating internal and external complaints, the Ombudsman may assist Department managers in efforts to resolve problems or improve on programs,

policies and regulations. The Ombudsman is expected to turn the results of his independent fact-finding into results that will get to the root of the problem.

Other Job Functions of the Ombudsman:

- ◆ Coordination of the Business and Environmental Roundtables
- ◆ Coordination of DEM Permit Streamlining activities and development of final report, i.e., Wetlands, ISDS, Waste Site Remediation and Air Pre-construction Task Forces
- ◆ Chair of Internal DEM committees, i. e. Morale Focus Group, Vehicle Policy
- ◆ Meeting with outside constituent groups
- ◆ Quality Assurance Manager

8. Open Forum

Topics or comments made in this portion of the meeting included the following:

- It should be made clearer that the Office of Technical Compliance and Assistance is not a regulatory function. In addition, DEM needs to address the issue of why people are fearful of asking questions of staff. The internal culture needs to change. If the culture did change, there would be less need for a law like the Compliance Incentive Act. There is a fine line between needing a shield and being able to pose inquiries. Companies should not be penalized for asking questions. DEM should continue with its compliance incentive activities.
- One participant wanted an update on dredging. DEM responded that new regulations have been developed that focus on upland disposal. The regulations will streamline the existing process and applications will trigger reviews of wetlands, water quality certification, fish & wildlife and other impacted DEM programs. The process will also be coordinated with the Army Corps of Engineers and the CRMC.
- Additional information was requested concerning the car inspection /maintenance with respect to on-board diagnostics. The questioner was directed to Tom Barry, the DEM contact in the Office of Air Resources.

The meeting was adjourned and the next meeting was set for May 25, 2002.

Comments: E. Stone, T. Gray